U.S. Senate
Republican Policy Committee

Larry E. Craig, Chairman
Jade West, Staff Director
No. 93

Legislative Notice

Editor, Judy Gorman Prinkey

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S. 2454 — Auto Choice Reform Act

Calendar No. 568

Bill was read the second time on September 10, 1998, and placed on the Calendar.
No committee report.

NOTEWORTHY

- The Senate may begin consideration of S. 2454 this week. It is anticipated that the Majority Leader will need to file cloture on the motion to proceed.
- S. 2454, introduced by Senators McConnell, Lieberman, Moynihan, Nickles, Grams, and Gorton, is similar to the original bill, S. 625, and to H.R. 2021, introduced by Representatives Armey (R-TX) and Moran (D-VA).
- The Auto Choice Reform Act would allow consumers to choose between existing fault-and-liability-insurance coverage options and a new system. The new system would give motorists a more affordable alternative for personal injury coverage designed to provide more adequate and timely compensation for accident victims, and less need for lawyers.
- The bill provides specific steps for states to opt out of participating in "auto choice." No new bureaucracy is created, and regulation of auto insurance remains with the states.
- Sponsors describe the bill as legal reform with clear consumer benefits: it allows choice, saves money, and provides more equitable compensation. It elevates the right to recover over the right to sue, and results in significant savings because fewer dollars would be spent on lawyers, fraud, and pain-and-suffering litigation; the savings would be passed on to the consumer in the form of lower premiums.
- The Joint Economic Committee (JEC) estimates that the bill could save consumers $35 billion a year, at no cost to the federal government. It is estimated to reduce the average automobile insurance premium by 24 percent, an annual savings of roughly $200 per car per year for the average motorist.
- Low-income and urban drivers would see even greater savings under "auto choice." They would see their premiums reduced by more than one-third.

BACKGROUND

The Need for "Auto Choice"

Sponsors offer consumers a chance to opt-out of the current automobile liability lottery insurance system. The current tort system forces consumers to pay premiums that price many out of the market and fails to provide for equitable coverage. Between 1987 and 1994, the average auto policy rose 44 percent, nearly one-and-a-half times the rate of inflation.

- Lawyers take in nearly double the amount of money that injured parties receive for actual economic losses. According to the Joint Economic Committee, 28 percent of insurance premiums paid for bodily injury coverage end up going to lawyers' fees and less than 15 percent pay for actual medical bills and lost wages. Pain and suffering awards take 17 percent, while payments for fraudulent and excessive claims account for 13 percent.

- The current system encourages rampant fraud and abuse. FBI Director Louis Freeh has estimated that every American household is burdened by an additional $200 in unnecessary insurance premiums to cover auto insurance fraud nationwide, such as staged accidents.

- In addition, the incentives of our litigation system encourage injured parties to make excessive medical claims to drive up their damage claims in a lawsuit. This is because for every $1 of economic loss, a typical jury will award $3 in pain and suffering. A 1995 study by the Rand Institute for Civil Justice concluded that 35-to-42 percent of claimed medical costs in car accident cases are excessive and unnecessary. Rand estimated that this fraud resulted in $13-to-$18 billion in increased premiums.

- Medicare and the federal portion of Medicaid pay for 15 percent of all medical costs resulting from motor vehicle crashes. Auto Choice would substantially reduce the cost of auto accidents borne by the federal government—seriously injured parties are grossly undercompensated in the current tort system.

- Recovery of economic loss is extremely inequitable. A 1991 Rand study reveals that accident victims with economic losses between $25,000 and $100,000 recover on the average only 50 percent of the economic losses and nothing for pain-and-suffering. Those with losses in excess of $100,000 recover on average only 9 percent of economic losses.

- A 1995 Department of Justice study found that auto accident cases are the most common form of tort litigation against businesses— nearly 40 percent of tort cases are auto-related.

- The JEC estimates that with passage of this bill, the average commercial vehicle premium would decline by 27.5 percent.

- The new option would be similar to a home owner's insurance policy. The policyholder would promptly recover economic losses without hiring a lawyer and without suing for pain-and-suffering.

Moving More Americans from Welfare to Work

- The current automobile insurance system places an unfair burden on low-income Americans who pay a substantially higher percentage of their household incomes on transportation expenses.

- A survey of local welfare administrators found that transportation to jobs was a significant obstacle to moving people off welfare. Because high premiums make it more difficult to own a car, many low-income, inner-city workers are unable to access better-paying suburban jobs.

- The regressivity of the current system is heightened by the fact that the average low-income family pays more in auto insurance in two years than the entire value of their car (see JEC study, "Auto Choice, Impact on Cities and the Poor," Mar. 1998).

- In testimony before the Senate Commerce Committee, Professor Robert Maril cited a study he conducted in rural Arizona where low-income drivers were forced to pay as much as 31.6 percent of their disposable income for auto insurance.

HIGHLIGHTS

Personal Protection Insurance

- The Auto Choice Reform Act offers consumers a way out of the current automobile insurance tort system. Consumers choosing the new system, called Personal Protection Insurance, would be guaranteed prompt recovery of their economic losses from their own insurance company. Additionally, they would give up the chance to recover pain-and-suffering damages in exchange for being protected from pain-and-suffering claims.

The Right to Sue

- Accident victims insured under the new system may sue to recover any economic damages (such as medical bills and lost wages) above their policy limits.
- All injured parties would be able to sue for economic and noneconomic damages inflicted intentionally or as a result of drugs or alcohol.
- Drivers may choose to remain in the tort liability system, and could continue to sue each other as they do now. These drivers would purchase Tort Maintenance Coverage that would cover them in the event they are in an accident with a driver in the new system.

Savings for Consumers

- The Joint Economic Committee estimates that consumers could save more than $35 billion a year, at no cost to the government. This savings would be the equivalent of a $193 billion tax cut over five years.
- The average auto premium would be reduced by nearly one-fourth, and the bodily injury portion of the premium would be cut by nearly half. These savings will put roughly $200 back into the pocket of the average motorist.

Federalism Provisions

- "Auto Choice" creates no new federal bureaucracy. It leaves insurance regulation to the states. Moreover, states may opt-out of "Auto Choice" if the state legislature passes an opt-out statute, or if the state insurance commissioner determines that the bill would not reduce bodily injury premiums by 30 percent.
- The bill states, "Nothing in this Act shall be construed to preclude a State or State official charged with regulatory authority over the business of insurance from fully exercising that regulatory authority, including adopting regulations and procedures regarding (A) rates, (B) policy forms, (C) company solvency, (D) consumer protection, (E) underwriting and marketing practices, and (F) carrying out the requirements of this Act."

Comparison of the Fault and Liability Insurance System and the Personal Protection Insurance (PPI) System of "Auto Choice"

Current System **Fault/Liability Insurance System**	**Proposed Alternative** **Personal Protection Insurance System**
Pays no benefits to more than 30% of all accident victims (often the victims of single-car accidents).	Pays benefits to <u>all</u> accident victims.
Pays benefits contingent on other driver's fault.	Pays benefits to <u>all</u> accident victims, regardless of fault.
Encourages fraud *(more than one-third of all medical claims are fraudulent in response to the incentives of the tort system).*	Eliminates incentives for fraud
Recovery contingent on other driver's behavior and auto insurance coverage	Recovery determined by individual's own choice of insurance coverage.
Inequitable coverage: --minor injuries compensated at an average of 2 to 3 times economic losses --serious injuries compensated at an average of less than 50% of economic losses.	Equitable coverage: --all economic losses compensated up to the level of coverage selected --may sue for excess economic loss
In serious injury cases, pays for losses only after trial or settlement, which can take 2 to 3 years.	In all cases, pays for actual economic losses within 30 days of submission of a bill.
Pays more dollars for lawyers than for victims' legitimate medical bills and lost wages.	Eliminates needs for most lawyers. Uses the savings to pay more injured people more equitably and to lower premiums.
Average bodily injury premium, nationwide, costs $400.	Personal protection benefits and residual bodily injury liability coverage would average $216.

This chart prepared by the Coalition for Auto-Insurance Reform (CAR)

BILL PROVISIONS

S. 2454 is divided into nine sections. The title of the bill specifies that S. 2454 seeks to provide a choice of motor vehicle insurance for motorists, guarantee more affordable insurance premiums, and provide more adequate and timely compensation for accident victims.

Section 1. Short Title

The section identifies the short title of the bill as "The Auto Choice Reform Act of 1997."

Section 2. Findings

This section states:

- the costs of operating a motor vehicle are excessive due in large part to the legal and administrative costs associated with the tort liability insurance system;
- the tort liability insurance system often fails to provide adequate compensation in a timely manner;
- the distorted incentives of the tort liability system result in fraud and a wasteful overuse of health care resources;
- urban areas and low-income individuals bear a disproportionately high share of the costs of the current tort liability auto insurance system; and
- a system that allows individuals to choose the form of insurance they want would enhance individual freedom, reduce the cost of motor vehicle insurance, and increase average compensation for accident victims.

Section 3. Purpose

The purpose of this bill is to allow consumers to choose between: (1) an insurance system that provides substantially the same remedies presently available under State law (**Tort Maintenance System**); and (2) a predominantly first-party insurance system that provides quicker, more comprehensive recovery of economic loss on a first-party basis and grants victims the right to sue negligent drivers for any uncompensated economic losses (**Personal Protection System**).

Section 4. Definitions

This section defines key terms, including:

" Economic loss" means any objectively verifiable pecuniary loss, including medical bills and lost wages, resulting from an auto accident.

" Noneconomic loss" means subjective, nonmonetary losses, such as pain and suffering losses.

" Personal protection insurance" means motor vehicle insurance that provides benefits directly to an insured person for economic loss, without regard to fault.

"Tort liability insurance" means motor vehicle insurance under which an insurer agrees to pay damages to an injured third-party, as a result of the fault of one of its policyholders.

"Tort maintenance coverage" means motor vehicle insurance that allows an injured party to recover both economic and noneconomic losses from its own insurer, whenever that party is involved with a motorist who is covered by personal protection insurance.

"Uncompensated economic loss" means economic loss that is not compensated by any source. This loss may be recovered through legal action against an at-fault driver.

Section 5. Auto Choice Insurance System

The section sets forth the basic choice of insurance systems offered to consumers under the bill: **(1) Personal Protection System**, and **(2) Tort Maintenance System**. Tort maintenance is the insurance system for motorists who wish to remain in the tort liability scheme. Its costs will remain the same. Personal protection, on the other hand, is the new system made available under this bill that offers drivers lower premiums and guaranteed compensation for economic loses up to the amounts they choose.

Personal Protection System: Subsection (b) describes the particulars of the personal protection system. Personal protection insurance policies must provide first-party coverage for economic loss and third-party liability coverage for uncompensated economic loss at least to the levels required by the applicable state financial responsibility law (which establishes the minimum amount of liability insurance required to drive an automobile in that state). Personal protection insurance policies must include a waiver of most tort claims for noneconomic loss.

This subsection also establishes that auto insurance will be the primary source of payment for the costs of economic losses resulting from auto accidents.

Additionally, the subsection ensures "prompt and periodic payment" of economic losses by requiring insurers to pay claims within 30 days after the payment is due. An insurer that fails to pay a legitimate claim within 30 days is subject to penalties, including a reasonable attorney's fee.

Tort Maintenance System: Subsection (c) describes the particulars of the tort maintenance system. Persons who choose to remain in the tort system will be required to purchase tort maintenance coverage in the minimum amounts required under the applicable State financial responsibility law for bodily injury. This coverage will ensure that tort drivers will have the right to recover for both economic and noneconomic losses. The mechanics of such recovery will be similar to the current State procedure governing benefits paid to injured policyholders with uninsured or motorist coverage.

Tort System as the Default Choice: Subsection (f) provides that any person who fails to elect a type of insurance shall be deemed to have elected insurance under the tort maintenance system in effect in that person's State.

Consumer Information Program: Subsection (g) sets forth provisions to ensure that consumers are adequately informed about the comparative cost and benefits of insurance under both the personal protection and tort maintenance systems.

Section 6. Source of Compensation in Cases of Accidental Injury

This section sets forth the sources of compensation under different auto accident scenarios.

Tort versus Tort: In an accident involving two drivers in the tort maintenance system, both drivers would recover economic and noneconomic losses the same way they currently do. In most states, tort drivers sue one another to recover economic and noneconomic losses based on a legal determination of negligence.

Personal Protection versus Personal Protection: In an accident involving two drivers with personal protection insurance, both drivers would promptly recover their economic losses up to the level of the policy benefits from their own insurance companies without regard to fault. Both drivers could then sue one another to recover any uncompensated economic losses based on a determination of negligence. These drivers would waive the chance of recovering noneconomic damages from one another.

Tort versus Personal Protection: In accidents involving a driver with personal protection insurance (PPI) and a driver with tort maintenance insurance (TMI), the TMI driver would recover his economic and noneconomic losses from his own insurer based on negligence principles. The TMI driver could sue the PPI driver for any uncompensated economic losses.

The PPI driver would recover his economic losses from his own insurance company without regard to fault, and then be able to sue the TMI driver for any uncompensated economic losses. Both the TMI driver and the PPI driver would be protected from noneconomic damage claims.

Victims of Drunk Driving: This section also provides that drunk driving victims will be unaffected by the bill and continue to be able to recover both economic and noneconomic losses under the applicable state tort law.

No Premium Increase Without Cause: Subsection (i) specifies that an insurer shall not increase the premium of a person insured by that insurer solely because that person makes a claim for benefits and there is no basis for ascribing fault to the insured.

Section 7. Rules of Construction

This section provides that nothing in this bill shall be construed to:

- affect the awarding of punitive damages under any State law;
- vest jurisdiction in a Federal District Court over any motor vehicle accident action that is not otherwise within such court's jurisdiction;
- limit the authority of a State to fully regulate the business of insurance, including: adopting regulations and procedures regarding rates, policy forms, company solvency, consumer protection, underwriting and marketing practices, and carrying out the requirements of this Act.

Section 8. Applicability to States

This section allows States to opt-out of Auto Choice in one of two ways. First, a State legislature simply may pass a statute declaring that this Act will not apply in that State. Second, the legislation guarantees savings by stating that the bill will not go into effect if the State insurance commissioner finds that persons who choose personal protection insurance would not receive a 30 percent reduction in bodily injury premiums.

Section 9. Effective Date

This legislation shall take effect 180 days after the date of enactment.

ADMINISTRATION POSITION

There was no official Administration Position available at press time.

OTHER VIEWS

Broad Political Support

In addition to its bipartisan, bicameral support (sponsors are Senators McConnell, Lieberman, Moynihan, Nickles, Grams, and Gorton, and House sponsors are Majority Leader Dick Armey (R-TX) and Congressman Jim Moran (D-VA)), the bill is supported by Governors John Engler and Christie Whitman, as well as Mayor Rudolph Giuliani and former Massachusetts Governor Mike Dukakis. Other supporters include the U.S. Chamber of Commerce, Citizens for a Sound Economy, the American Insurance Association, the Democratic Leadership Council, and the Coalition for Auto-Insurance Reform (CAR, whose members include the American Trucking Associations, Ford, United Parcel Service, State Farm and USAA, and the Brain Injury Association, Inc.).

"Rather than forcing states to adopt a federal standard for automobile insurance, the Auto Choice Reform Act of 1997 allows states to 'opt out' . . . without risking the loss of federal funds or other benefits." ***John Engler, Governor of Michigan***

Auto Choice is "a model of federalism because the federal government is the first word, not the last word, on the subject." ***Christie Todd Whitman, Governor of New Jersey***

Auto Choice "would be a boon to people who suffer serious losses in an accident. ... The McConnell-Armey reform would slash frivolous suits and inflated claims." ***Steve Forbes, Editor-in-Chief of Forbes Magazine and 1996 Republican Presidential Candidate***

Auto Choice "is needed nationwide to protect ordinary drivers . . . . With litigation incentives eliminated, motorists will pay only for protection actually provided at a price they can truly afford. . . . Passage of this bill would make an important difference to New Yorkers and drivers throughout the country." ***Rudolph W. Giuliani, Mayor of New York***

Auto Choice "gives consumers something they really want - a chance to choose the kind of auto insurance that fits their individual needs. Auto Choice is an idea whose time has come." ***Grover G. Norquist, Americans for Tax Reform***

"Given the horrendous high costs of auto insurance, coupled with its long delays, high overhead, and rank unfairness when it comes to payment, your 'choice' reform takes the sensible approach of allowing consumers to choose how to insure themselves." ***Mike Dukakis, former Governor of Massachusetts and 1988 Democratic Presidential Nominee***

"This legislation targets, in a very real way, one of the most regressive and unfair costs imposed on the urban poor--auto insurance premiums.... By increasing the affordability of auto insurance, we can reduce the growing problem of uninsured motorists." ***Wellington E. Webb, Mayor of Denver and President-elect of U.S. Conference of Mayors***

Opponents include: the Association of Trial Lawyers of America (ATLA), Public Citizen, National Association of Independent Insurers (NAII), and National Conference of Insurance Legislators (NCOIL). NCOIL believes that "the bill runs contrary to the McCarran-Ferguson Act and its long standing Congressional mandate empowering the states to regulate the business of insurance and to formulate public policy when it comes to insurance."

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